

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**FREDRICK SYKES**

**PLAINTIFF**

**V.**

**NO. 4:16CV125-DMB-DAS**

**BRIAN PAYNE, ET AL.**

**DEFENDANTS**

**REPORT AND RECOMMENDATION**

On October 20, 2016, plaintiff Fredrick Sykes, a former inmate of the Washington County Correctional Facility, was scheduled to appear before the undersigned for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir.1985), to determine whether there exists a justiciable basis for his claim filed under 42 U.S.C. § 1983. The order initially setting the hearing cautioned Sykes that failing to comply with the order's requirements could lead to the dismissal of his lawsuit under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with an order of the court. Sykes, who is no longer incarcerated, acknowledged receipt of the order setting the hearing on September 3, 2016. *See* doc. #16. Despite the warning given to Sykes, he failed to appear at the *Spears* hearing. Therefore, the undersigned recommends that the instant suit be dismissed without prejudice for Sykes' failure to prosecute.

**Handling of Objections, Acknowledgment of Receipt**

The appropriate procedures for filing objections to these findings and recommendations are found in 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). Objections must be in writing and must be filed within fourteen (14) days of this date, and "a party's failure to file written objections to the findings, conclusions, and recommendations in a magistrate judge's report and

recommendation within [14] days after being served with a copy shall bar that party, except on grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. . . .". *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc) (citations omitted); *see also United States v. Carrillo-Morales*, 27 F.3d 1054, 1061-62 (5th Cir. 1994), *cert. denied*, 513 U.S. 1178 (1995).

The plaintiff must acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the clerk of the court within fourteen (14) days of this date. Failure to comply with the requirements of this paragraph may lead to dismissal of this lawsuit under Fed. R. Civ. P. 41(b) for failure to prosecute the claim and for failure to comply with an order of the court.

Respectfully submitted this the 20<sup>th</sup> day of October, 2016.

/s/ DAVID A. SANDERS  
UNITED STATES MAGISTRATE JUDGE